

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

IN RE: PHARMACEUTICAL INDUSTRY  
AVERAGE WHOLESALE PRICE LITIGATION

MDL NO. 1456

THIS DOCUMENT RELATES TO:

CIVIL ACTION: 01-CV-12257-PBS

*State of Arizona v. Abbott Labs., Inc., et al.*,  
Case No. 1:06-CV-11069-PBS

Judge Patti B. Saris

**STATE OF ARIZONA'S DECEMBER 2009 STATUS REPORT**

The State of Arizona respectfully submits this report summarizing the status of the Arizona AWP case. The State initiated this lawsuit against various pharmaceutical company defendants in the Superior Court of the State of Arizona, Maricopa County, on December 6, 2005. The case was subsequently transferred to this Court. The last status report in this case was submitted on May 27, 2009 (Dkt. No. 6081), in advance of the May 28, 2009 Status Conference in this and other cases. This report relates the status of the case against all remaining defendants.

**A. Motions to Dismiss**

As the Court is aware, motions to dismiss have been briefed and a hearing was held on February 4, 2009. The hearing covered the procedural status of the case and some, but not all, aspects of the motions to dismiss.

**B. Voluntary Stay of the Case**

After the February 4, 2009 hearing, at the Court's suggestion, the parties agreed to a voluntary stay pending a First Circuit decision on the appeals from the Class 2/3 trial ruling. Although the First Circuit has since ruled, the stay remains in effect. During the pendency of the stay, the State and several defendants reached settlement agreements, reported below.

## **C. Settlements**

Five defendants remain in the case. Settlements reached since the May 28, 2009 Status Conference are reported below. A table summarizing the status of all defendants originally in the case is attached as Exhibit A to this report.

### **1. Track Two Settlement**

The State of Arizona reached a settlement of all claims with the “Track Two Defendants”<sup>1</sup> as of May 20, 2009. The Settlement has been funded. A stipulation dismissing the Track 2 Defendants was filed June 25, 2009 (Dkt. No. 6172).

### **2. BMS Settlement**

The State of Arizona and BMS reached a settlement of all claims as of August 27, 2009. The settlement has been funded. A stipulation dismissing BMS was entered on September 16, 2009 (Dkt. No. 6508).

## **D. Dey, Inc.**

The status of the State’s settlement with Dey has not changed since the last report. The State of Arizona and Dey reached a settlement in principal with the assistance of Professor Eric Green in December 2007. Since that time the State and Dey have not been able to reach agreement on the terms of a Settlement Agreement and Release. The principal point of disagreement is the breadth of the release Dey has demanded from the State which goes beyond the claims brought in the lawsuit and beyond the Attorney General’s authority. Dey seeks a

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<sup>1</sup> The settling Track Two defendants here include Abbott Laboratories, Abbott Laboratories Inc., Amgen Inc., Aventis Pharmaceuticals Inc., Hoechst Marion Roussel, Inc., Baxter Healthcare Corporation, Baxter International Inc., Bayer Corporation, Boehringer Ingelheim Pharmaceuticals, Inc., Ben Venue Laboratories, Inc., including its division Bedford Laboratories, Boehringer Ingelheim Roxane, Inc., Roxane Laboratories, Inc., Fujisawa Healthcare, Inc., Fujisawa USA, Inc., Immunex Corporation, Pharmacia Corporation, Pharmacia & Upjohn LLC (f/k/a Pharmacia & Upjohn, Inc.), Sicor, Inc., Gensia, Inc., Gensia Sicor Pharmaceuticals, Inc., Watson Pharmaceuticals, Inc., Watson Pharma, Inc., Schein Pharmaceutical Inc. (n/k/a Watson Pharma, Inc.), Watson Laboratories, Inc., and ZLB Behring, L.L.C.

release from Arizona Medicaid. Any claims Arizona Medicaid may have are not part of this case and were never part of the case. The release Dey seeks is broader than the releases obtained by any other defendant settling with Arizona in this case.

The State drafted an alternate Settlement Agreement and Release and provided it to Dey in May 2009. Dey has responded, but did not accept the alternate draft. Arizona's position is that it has a binding settlement of its AWP claims with Dey.

The State will ask Professor Green to intervene if an accord cannot be reached with Dey by December 31, 2009, the State will pursue its civil penalty claims against Dey.

**E. The Remaining Defendants**

The following defendants remain in the case:

- 1. AstraZeneca**
- 2. Braun**
- 3. Johnson & Johnson**
- 4. Schering-Plough Warrick**

The State would like to pursue mediation with these defendants with Professor Green. If the State and the remaining defendants cannot reach an agreement, the State intends to pursue its civil penalty case as to each of these defendants once the stay is lifted.

Dated: December 2, 2009

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**CERTIFICATE OF SERVICE**

I, Steve W. Berman, hereby certify that a true and correct copy of the above document was served on the attorney of record for each party via the Court's electronic filing system this 2nd day of December, 2009.

**By s/ Steve W. Berman**

Steve W. Berman

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# **EXHIBIT A**

**In re AWP Litigation - ARIZONA  
Status of Defendants as of December 2, 2009  
(Red indicates Defendants not yet dismissed)**

Abbott (settled)
Amgen (settled)
<b>AZ</b>
Aventis (settled)
Baxter (settled)
Biogen IDEC (voluntarily dismissed 2-11-09)
Boehringer (settled)
<b>Braun</b>
BMS
<b>Dey</b> (settlement pending)
Fujisawa (settled)
Immunex (settled)
<b>J&amp;J</b>
Merck & Co. (voluntarily dismissed 2-11-09)
Pharmacia (settled)
<b>Schering-Plough</b>
Sicor (settled)
<b>Warrick</b>
Watson (settled)